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(a) In supporting his rejections, Examiner states that:

"the references are plain and clear teachings of the invention. The "person of ordinary skill in the art" knows the details of every reference in the related art and possesses a high level of skill".

Applicant is at a loss to understand the pertinence of this statement.

(b) Express provisions of MPEP 706.02 notwithstanding, Examiner has plainly failed to set forth "the difference or differences in the claim over the applied references". Without Examiner so doing, Applicant is prevented from properly analyzing and evaluating Examiner's rejections and is therefore being deprived of due process; in the absence of which Examiner has no basis on which to reject Applicant's claims.

(c) Express provisions of MPEP 706.02 notwithstanding, Examiner has also failed to set forth "the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter". Without Examiner so doing, Applicant is prevented from properly analyzing and evaluating Examiner's rejections and is therefore being deprived of due process; in the absence of which Examiner has no basis on which to reject Applicant's claims.

(c) Express provisions of MPEP 706.02 notwithstanding, Examiner has also failed to set forth "an explanation why such proposed modification would be obvious". Without Examiner so doing, Applicant is prevented from properly analyzing and evaluating Examiner's rejections and is therefore being deprived of due process; in the absence of which Examiner has no basis on which to reject Applicant's claims.

(d) Exemplary claim 8 includes:

"voltage conditioner ... (i) operative to provide between the track conductors a track voltage having a fundamental frequency substantially higher than that of the power line voltage, and (ii) characterized by causing the electrical potential of the first track conductor to be substantially equal to that of the first power line terminal during a significant portion of each half-cycle of the track voltage".

This feature is neither described nor suggested by either of the applied references.

If Spira's frequency-converting power supply were to be used for powering the track conductors of Galindo's power track (which, on basis of the evidence represented by Spira and Galindo, is in fact a totally unobvious proposition), the resulting high-frequency track voltage would not cause "the electrical potential of the first track conductor to be substantially equal to that of the first power line terminal during a significant portion of each half-cycle of the track voltage", as expressly specified by claim 8. Instead, with Spira's power supply, the track voltage would be a high-frequency voltage of substantially constant (i.e., non-modulated) magnitude (255 Vac). Clearly, to come under the definition of claim 8, as a very minimum, the track voltage would have to be amplitude-modulated in complete synchronism and phase with the instantaneous absolute magnitude of the power line voltage.

(e) Exemplary claim 9 basically defines a track lighting system where a track lighting unit has an incandescent lamp supplied with high-frequency voltage from a frequency conversion means connected in circuit between the power line voltage and the incandescent lamp.

This feature is neither described nor suggested by either of the applied references.

For Examiner to understand why this feature is not suggested by the applied references, it is necessary first for Examiner to understand and appreciate the following facts; which facts are corroborated by Mr. Fiene in his Affidavit.

(1) Track lighting systems are incandescent lighting systems; which is to say: they are for use with incandescent lamps, not with fluorescent lamps. Thus, to provide the very function for which they were designed and for which they are indeed used, track lighting systems are used with incandescent lamps for the reason that only incandescent lamps possess the optical characteristics required for the track lighting function; which is that of providing aimed or directed light, such as light aimed at a given spot, like a painting or a display in a store. A fluorescent lamp on the other hand, due to the relatively large physical size of its light-emitting surface (i.e., the phosphor) (which is very much larger than the filament in an incandescent lamp), does not permit the focusing required for track lighting purposes.

(2) Contrary to the situation associated with fluorescent lamps, there is no known advantage associated with powering an incandescent lamp with a high-frequency voltage as contrasted with a voltage of ordinary power line frequency.

(f) In supporting his position, Examiner states that:

"The ... affidavit filed November 13, 1990 disagrees with the arguments in the office action of October 18, 1990. However, one of ordinary skill is not limited to usual uses."  
(Emphasis added)

That statement is non-appropos.

Clearly, a person of ordinary skill "is not limited to usual uses". However, that is clearly not the issue. Rather, the issue is whether or not it would have been obvious for such a person of ordinary skill to seek to use the combination of Spira and Galindo for such "unusual uses" as inherent in the combination of the claimed invention.

Moreover, neither Spira nor Galindo provides even the faintest hint of a suggestion to the effect that it might be beneficial to combine their teachings to provide for such "unusual uses".

(g) Then, with respect to the combination of Spira and Galindo, Examiner goes on to state that:

"The benefits are clear and obvious".

Yet, Examiner has utterly failed to identify those benefits -- at least in a manner that is capable of being understood by a person having ordinary skill in the art pertinent hereto.

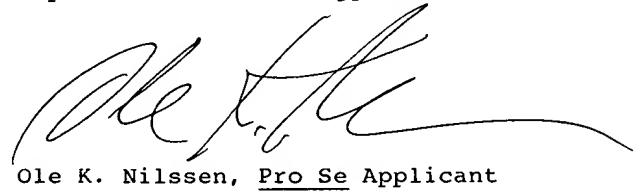
Moreover, Examiner has utterly failed to identify where and/or how such benefits might have been suggested by the two applied references -- whether taken individually and/or in combination.

Apparently, Examiner believes that there is a benefit associated with using "Track means ... in place of wires". --- Now, if that were the case, why would not "Track means" be used everywhere "in place of wires"?

As a person having but a modicum of familiarity with the art pertinent hereto would readily understand, there is no universal benefit associated with using "Track means ... in place of wires". Instead, "Track means" may in certain specific situations be beneficial to use "in place of wires". Yet, in most situations by far, there is no benefit whatsoever in using "Track means ... in place of wires": quite the contrary; which position is authoritatively supported by Mr. Fiene's expert testimony as presented in his Affidavit.

Thus, the question is this: does Spira and/or Galindo suggest a situation where it would be beneficial to use power

tracks instead of ordinary wires? --- If Examiner believes that the answer to that question is "yes", he must identify where and/or how Spira and/or Galindo provide for such suggestion.



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